

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:15-cv-2589-SVW	Date	May 18, 2015
Title	Kamonwan Visajnam, et al. v. Benihana Nat'l Corp.		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE
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Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: IN CHAMBERS ORDER TO SHOW CAUSE

“Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Defendant Benihana National Corp. invoked the Court’s diversity jurisdiction. (Notice of Removal, ¶ 5.) Therefore, it must demonstrate that the parties are completely diverse and over \$75,000 is in controversy. 28 U.S.C. § 1332.

It is unclear whether Defendant has established the requisite amount in controversy. Plaintiff Hirai appears to seek less than \$40,000 in compensatory damages. (Notice of Removal, ¶¶ 18-24.)¹ To meet the jurisdictional threshold, Defendant therefore relies on attorney’s fees it may incur during litigation. There is an intra-circuit split as to whether a court may only consider fees that have accrued by the time of removal or whether fees likely to accrue throughout the case should count too. *Fortescue v. Ecolab Inc.*, No. CV-14-0253 FMO RZX, 2014 WL 296755, at *3 (C.D. Cal. Jan. 28, 2014). Given that this issue appears to control whether the Court has subject matter jurisdiction over the case, the Court ORDERS DEFENDANT TO SHOW CAUSE why this case should not be remanded.

Defendant shall file its response to this order no later than June 1, 2015. Plaintiffs may respond no later than June 8, 2015. Defendant may file a reply no later than June 12, 2015. The matter is set for hearing on June 22, 2015, at 1:30 p.m.

¹ Defendant’s showing as to the other plaintiff was incomplete. Regardless, it does not appear that Visajnam’s claims would place more in controversy than Hirai’s claims do. The Court further notes that under most circumstances a removing defendant cannot aggregate multiple plaintiffs’ claims to meet the amount in controversy. *Troy Bank v. G.A. Whitehead & Co.*, 222 U.S. 39, 40 (1911); *Urbino v. Orkin Servs. of Cal., Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).

Initials of Preparer

PMC

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